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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,784	02/18/2004	Michael R. Carey	US20030479	2734

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WHIRLPOOL PATENTS COMPANY - MD 0750
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EXAMINER

PERRIN, JOSEPH L

ART UNIT	PAPER NUMBER
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1746

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/780,784

Applicant(s)

CAREY ET AL.

Examiner

Joseph L. Perrin, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 4,6,8-11,17,27,29 and 32-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,7,12-16,18-24,26,28,30 and 31 is/are rejected.
- 7) ☒ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20060710</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species II, Figures 3 & 9-10, with claims 1-7, 9, 12-16, 18-31 & 34 readable thereon, in the reply filed on 05 February 2007 is acknowledged. However, the listing of claims includes claims directed to non-elected species. In the elected Species of Figure 3 the shelf (30) clearly is only enabled to slide rearward via horizontal tracks/ledges (40) and not pivotable (the horizontal tracks would prevent such action). The shelf in non-elected Figure 4 is shown to be pivotable.

Therefore, claims 4, 6 & 27 including the shelf being pivotable and are considered directed to a non-elected species. Moreover, claims 9, 29 & 34 include the shelf supported by rollers engaging a floor under the mechanism. This can clearly be seen in non-elected Figure 5. Thus, the elected Species of Figure 3 in the original disclosure is not enabled by rollers engaging a floor as can be evidenced by the bottom lip below the slidable drawer in Figure 3 which would prevent rollers engaging a floor in a sliding action of the drawer. In the interest of compact prosecution, applicant's constructive election of Species II is noted. Since the aforementioned claims read on non-elected Species, claims 4, 6, 9, 27 & 29 are withdrawn from consideration as being directed to non-elected Species.

2. The claims directed to the elected Species II of Figures 3 & 9-10 are considered to be claims 1-3, 5, 7, 12-16, 18-26, 28 & 30-31. Claims 4, 6, 8-11, 17, 27, 29 & 32-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn

to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 05 February 2007.

3. The Examiner notes that applicant's position of claims 1, 12 & 30 being generic to all species is acknowledged and the Examiner agrees. All withdrawn claims dependent thereon may be subject to consideration on the merits upon allowance of the generic claims.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-3, 7, 12, 16, 20, 26, 28 & 30-31 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by DE 20302572 to HANSEN (cited as an "X" reference in the European Search Report). HANSEN discloses a laundry appliance having a cabinet (10/11) including a horizontal axis laundry treating mechanism, an openable door in a vertical front face thereof, a shelf (18) recessed in the cabinet and slidably incorporated into a drawer (13), the shelf being extendable to a horizontal position below the door. See Figures 4-7 and relative associated text. Accordingly, recitation of the apparatus disclosed in HANSEN reads on applicant's claimed apparatus.

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 12-16, 18-24, 26, 28, 30-31 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,082,783 to UIHLEIN *et al.* UIHLEIN discloses a support having a structure (14), a horizontally extendable and retractable drawer (26/28), a horizontal recessed shelf (48/70; 70 being removable) in the drawer and cover (66), and a support arrangement (50/52/46) readable on support arms and runners. See particularly Figures 2-3, 5-6 and relative associated text. Regarding the recitations “for a laundry appliance” and “for use with a laundry appliance”, these recitations are a statement of intended use which does not patentably distinguish over UIHLEIN since UIHLEIN meets all the structural elements of the claim(s) and is capable of supporting a laundry appliance if so desired. See MPEP 2114. Accordingly, recitation of the apparatus in UIHLEIN reads on applicant’s claimed apparatus.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over HANSEN. Recitation of HANSEN is repeated here from above. While HANSEN discloses securing the shelf in a fixed position and grasping means extending from the shelf (18) for manually opening the cover HANSEN does not expressly disclose grasping means with an opening for manually opening the cover. The position is taken that such grasping means are common knowledge and it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the projecting

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grasping means of HANSEN with an opening grasping means since applicant has not disclosed that grasping means with an opening solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with other grasping means and the selection of any of these known structural equivalents to provide means for grasping and operating the shelf would be within the level of ordinary skill in the art. The Examiner submits that substituting such conventional grasping means would be an obvious modification since there appears to be nothing unexpected in using one grasping means over the other.

Allowable Subject Matter

12. Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

13. It is noted that additional references were cited in the International Search Report dated 23 May 2006 as "X" references. Although the other references were cited as "X" references the references are not deemed necessary as prior art rejections since HANSEN (cited above) appears to be the most pertinent reference with regard to applicant's claimed invention.

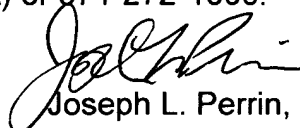
14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent Publication No. 2004/0221624 to FUMAGALLI, U.S.

Patent Publication No. 2004/0226320 to BONGINI, U.S. Patent No. 2002/0017117 to SUNSHINE *et al.*, & DE 9419048 to FRAGARIA, each disclosing a laundry machine cabinet with slidable drawer below the opening of the laundry machine.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Joseph L. Perrin, Ph.D.
Primary Examiner
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